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44987 7590 02/07/2011 HARRITY & HARRITY, LLP 11350 Random Hills Road SUITE 600 FAIRFAX, VA 22030				
EXAMINER				
ENGLAND, DAVID E				
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2443				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/658,424

**Applicant(s)**

LIU ET AL.

**Examiner**

DAVID E. ENGLAND

**Art Unit**

2443

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SD-405)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. Claims 1 – 20 are presented for examination.

**Continued Examination Under 37 CFR 1.114**

2. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 12/07/2010 has been entered.

**Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claim 20 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
5. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The claimed method includes steps of “receiving determining transferring and forwarding” that, in view of the broadest reasonable interpretation of the claim(s) as required by

MPEP 2111, the claim(s) could be completely performed mentally, verbally and/or without a machine OR fail to transform any underlying subject matter to any different state or thing.

6. The ambiguity of the method stems from there being no mention of any device and only "buckets" and "tokens", all of which seem to be an abstract idea, with no link to actual devices and bandwidth, as specifically claimed in claims 1 - 19.

### **Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**8. Claims 1, 5, 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson et al. (6052379) (hereinafter Iverson) and what is well known in the art.**

9. Referencing claim 1, as closely interpreted by the Examiner, Iverson teaches a method for allocating bandwidth in a network appliance where the network appliance includes a plurality of guaranteed bandwidth buckets used to evaluate when to pass traffic through the network appliance, the method comprising:

10. providing a shared bandwidth bucket associated with each of the plurality of the guaranteed bandwidth buckets, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19);

11. allocating bandwidth to the shared bandwidth bucket based on an underutilization of bandwidth in any one guaranteed bandwidth bucket, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19);
12. determining whether bandwidth in one guaranteed bandwidth bucket is sufficient to allow traffic to pass immediately through the network appliance, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19);
13. transferring bandwidth from the shared bandwidth bucket to the one guaranteed bandwidth buckets when the bandwidth in the one guaranteed bandwidth bucket is not sufficient to allow traffic to pass immediately through the network appliance, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19).
14. Iverson does not specifically teach a plurality of guaranteed bandwidth buckets or “another one of the plurality of guaranteed bandwidth buckets” which are involved in substantially the same process of allocating bandwidth as the plurality of guaranteed bandwidth buckets.
15. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have more than one guaranteed bandwidth bucket since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.
16. Furthermore, utilizing even more guaranteed bandwidth buckets, i.e., the “another one of the plurality of guaranteed bandwidth buckets”, is still duplicating the same structure and steps of transferring bandwidth to the “other one of the plurality of guaranteed bandwidth buckets”,

that are already carried out in the first part of the claim with regard to "the one of the plurality of guaranteed bandwidth buckets".

17. As to the limitation of "where the one of the plurality of guaranteed bandwidth buckets is allocated a first amount of bandwidth and the other one of the plurality of guaranteed bandwidth buckets is allocated a different amount of bandwidth", Iverson teaches allocating a first amount of bandwidth, see cited areas above and Appeal Decision dated 10/13/2010. As to the allocating a "different amount of bandwidth" to the "other one of the plurality of guaranteed bandwidth buckets", this is not specifically found in the specification. It is interpreted as the amount of bandwidth is whatever the bucket requests and needs for transferring information. It is well known in the art that there could be many different amounts of bandwidth needed for transmitting information since not all information that is communicated is the same size. Therefore it would have been predicable for one of ordinary skill in the art to know that bandwidth being allocated to different buckets would and could be different. It is noted that this limitation does not state when this occurs in the system, i.e., the "one of the plurality of guaranteed bandwidth buckets" could request bandwidth at one time and the "another one of the plurality of guaranteed bandwidth buckets" could request bandwidth much further in time, i.e., anywhere from 1 minute to 100 days depending on how the system is set up.
18. Applicant is asked to view the Board of Patent Appeals and Interferences' decision for logic still applies to what has been amended.

19. Referencing claim 5, as closely interpreted by the Examiner, Iverson teaches each of the plurality of guaranteed bandwidth buckets is associated with a traffic shaping policy, (e.g. col. 17, line 56 – col. 18, line 19, “*leaky bucket*”, See above reasoning for duplicating buckets).

20. Referencing claim 6, as closely interpreted by the Examiner, Iverson teaches the plurality of guaranteed bandwidth buckets are associated with a single traffic shaping policy, (e.g. col. 17, line 56 – col. 18, line 19, “*leaky bucket*”).

21. Claim 14 is rejected for similar reasons as stated above.

**22. Claims 2, 3, 7 – 11, 13 and 15 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson as applied to claims 1 and 5 above, and in view of Ho (6862270).**

23. As per claim 2, as closely interpreted by the Examiner, Iverson teaches a shared bandwidth bucket but does not specifically teach tokens in the bucket. Ho teaches tokens in a bucket, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because tokens can be allocated as a set rate, example 1 token equaling 1 kilobyte, which could aid in classifying packets to a type of service or priority given, by the amount of tokens guaranteed to the packet.

24. As per claim 3, as closely interpreted by the Examiner, Iverson teaches the plurality of guaranteed bandwidth bucket but does not specifically teach tokens in the bucket, (See above description of duplication of parts.). Ho teaches tokens in a bucket, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

25. As per claim 7, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on IP address.

26. Ho teaches a policy screens based on IP address, (e.g. col. 12, lines 40 – 62, “*parameters such as ... IP Source Address*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because it would be more beneficial in certain situations, for example where low-priority traffic in one LAN group flow is protected from high-priority traffic in a misbehaving (not conforming to specified flow spec) flow when both flows are forwarded through the same wan group/VC.

27. As per claim 8, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on source IP address.

28. Ho teaches a policy based on source IP address, (e.g. col. 12, lines 40 – 62, “*parameters such as ... IP Source Address*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because of similar reasons stated above.



29. As per claim 9, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy screens are based on destination IP address.

30. Ho teaches a policy based on destination IP address, (e.g. col. 12, lines 40 – 62, “*parameters such as... IP Destination Address*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because of similar reasons stated above.

31. As per claim 10, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on protocol type.

32. Ho teaches a policy screens are based on protocol type, (e.g. col. 12, lines 40 – 62, “*parameters such as... IP protocol*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because of similar reasons stated above. Furthermore, to would be more efficient for a system that processes specific data protocols to filter the data based on protocol type before the data reaches the processor.

33. As per claim 11, as closely interpreted by the Examiner, Iverson teaches a traffic shaping policy but does not specifically teach a policy based on UDP/TCP port number. Ho teaches a policy screens are based on UDP /TCP port number, (e.g. col. 12, lines 40 – 62, “*parameters such as... TCP/UDP Destination Port Start*”). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to combine Ho with Iverson because it would be more efficient for a system to utilize a widely use protocol that most system use than have

different protocols that a foreign network is unfamiliar with and will not be able to understand the packet's format.

34. As per claim 15, as closely interpreted by the Examiner, Iverson in combination with Ho teach all that is similar above in claim 1 as applied to claim 15, Ho further teaches a scheduler operable to

35. evaluate a packet to determine if a traffic shaping policy should be applied to the packet, (e.g. col. 12, lines 15 – 40, “*QME, FCE, FSE*”),

36. evaluate a guaranteed bandwidth bucket associated with an identified traffic shaping policy, (e.g. col. 12, lines 15 – 40, “*QME, FCE, FSE*”), and Iverson teaches determine when the guaranteed bandwidth bucket, of the plurality of guaranteed bandwidth buckets, associated with an identified traffic shaping policy has insufficient capacity to support a transfer of the packet through the network, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19), and

37. borrow bandwidth from the shared bandwidth bucket by guaranteed bandwidth bucket, of the plurality of guaranteed bandwidth buckets, to allow traffic to pass immediately through the network appliance, (e.g. Abstract, Fig. 10 & col. 17, line 56 – col. 18, line 19, See above description of duplication of parts.). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

38. As per claim 16, as closely interpreted by the Examiner, Iverson teaches a network device comprising:

39. a first bucket to receive bandwidth at a first information rate, (e.g. col. 17, line 41 – col. 18, line 20, “CIR”);
40. a second bucket to receive bandwidth at a second information rate, (e.g. col. 17, line 41 – col. 18, line 20, “*bucket 402*”);
41. a third bucket to receive extra bandwidth from the different bucket, (e.g. col. 17, line 41 – col. 18, line 20, “*bucket 404*”, “*BpEsum is the water level value in the second bucket 404 and represents the current accumulated value of unused bandwidth in excess of CIR+B<sub>c</sub> (i.e. past overflows from the first bucket 402).*”); and
42. a scheduler
43. to:
44. determine if a size of traffic received at the network device exceeds a bandwidth stored in the first bucket, (e.g. col. 17, line 41 – col. 18, line 20),
45. determine, when the size of the traffic does not exceed the bandwidth stored in the first bucket, if a size of the traffic exceeds a bandwidth stored in the second bucket, (e.g., col. 18, line 32 – col. 19, line 27), and
46. transfer, when the size of the traffic exceeds the number of tokens stored in the second bucket, and appropriate number of tokens from the third bucket to the second bucket so that the second bucket includes a number of tokens that equals or exceeds the size of the traffic, (e.g., col. 18, line 32 – col. 19, line 27). Iverson does not specifically teach the use of tokens. Ho teaches the use of tokens in buckets and refreshing said tokens, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a plurality of guaranteed bandwidth buckets, (first, second, third bucket), since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

47. As per claim 17, as closely interpreted by the Examiner, Iverson teaches causing the traffic to be forwarded after the transfer, (e.g. col. 17, line 56 – col. 18, line 19);

48. decrement the bandwidth in the first and second buckets based on the size of the traffic, (e.g., col. 18, line 32 – col. 19, line 27). Iverson does not specifically teach the use of tokens. Ho teaches the use of tokens in buckets and refreshing said tokens, (e.g. col. 11, lines 30 – 44, “*token bucket*”). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above.

49. As per claim 18, as closely interpreted by the Examiner, Iverson in combination with Ho teach all that is similar above in claims 1 – 3, 7 – 11 and 15 – 17 as applied to claim 17, furthermore, Iverson teaches determine if the third bucket includes the appropriate amount of bandwidth, and prohibit the traffic from being forwarded when the third bucket includes less than the appropriate amount of bandwidth, (e.g. col. 18, line 32 – 41). Ho teaches that the buckets contain tokens, (e.g. col. 11, lines 30 – 44). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Ho with Iverson because of similar reasons stated above. Furthermore, it would be obvious to anyone skilled in the art that in transmitting information utilizing token buckets, that if a bucket is void of the required tokens,

and there is no other backup source to receive more tokens than it is not possible to transmit a message because all resources are used up and the system would have to wait till the resources were available to transmit said message.

50. As per claim 19, as closely interpreted by the Examiner, Iverson teaches one or more input ports to receive traffic from a network, (e.g., col. 2, lines 64 – 67 & col. 17, line 56 – col. 18, line 19), but not specifically each of the one or more input ports including another first bucket, another second bucket, another third bucket, and Ho more specifically teaches the scheduler, (e.g. col. 12, lines 15 – 40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to duplicate the amount of buckets used in the system as it is stated above in claim 1.

51. Claims 13 and 20 are rejected for similar reasons as stated above.

52. **Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson as applied to claim 1 above, and in view of Applicant's admitted prior art.**

53. As per claim 4, as closely interpreted by the Examiner, Iverson does not specifically teach the plurality of guaranteed bandwidth buckets are credit/debit buckets. Applicant's admitted prior art suggests the use of credit/debit buckets being a modified type of token buckets, (e.g. page 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the Applicant's admitted prior art with Iverson because using

credit/debit buckets instead token buckets give the system more versatility that token buckets cannot perform, (i.e. credit/debit tokens bucket can be negative).

**54. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Iverson and Ho as applied to claims 1 & 5 above, and in further view of Chiruvolu (6839321).**

55. As per claim 12, as closely interpreted by the Examiner, Iverson and Ho do not specifically teach the traffic shaping policy screens are based on the type of service requested.

56. Chiruvolu teaches the traffic shaping policy screens are based on the type of service requested, (e.g. col. 6, lines 19 – 35). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Chiruvolu with the combine system of Iverson and Ho because it would be more efficient for a system to give priority to users that has a higher type of service as indicated by their priority bit therefore, meeting the requirements of a guaranteed quality of service.

#### **Response to Arguments**

57. Applicant's arguments filed 12/07/2010 have been fully considered but they are not persuasive.

58. In the Remarks, Applicant argues in substance that Iverson does not teach the amended limitations of the claims.

59. As to this remark, Applicant is asked to review the Patent Appeals Board Decision dated 10/13/2010, in which the same arguments and responses can be applied since it appears that the amended claim language is further duplicating the amount of bandwidth buckets with no difference in steps. The only “difference” is the amount of allocated bandwidth, which the Examiner discusses the interpretation above in the rejection.

60. All other remarks are similar in nature and are remedied with the above rejections and response above.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID E. ENGLAND whose telephone number is (571)272-3912. The examiner can normally be reached on Mon-Thur, 7:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Tonia Dollinger can be reached on 571-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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